

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY,	)	
	)	
Plaintiff/Counterclaim-Defendant	)	CIVIL ACTION
v.	)	
	)	NO. 16-147-KRG
DANIEL J. FELIX,	)	
	)	
Defendant/Counterclaim-Plaintiff	)	

**PLAINTIFF/COUNTERCLAIM DEFENDANT AMERICAN NATIONAL  
PROPERTY AND CASUALTY COMPANY’S RESPONSE IN OPPOSITION TO  
DEFENDANT/COUNTERCLAIM PLAINTIFF DANIEL J. FELIX’S MOTION FOR  
PREJUDGMENT INTEREST AND POST JUDGMENT INTEREST PURSUANT TO 28  
U.S.C.A § 1961**

Plaintiff/Counterclaim Defendant American National Property and Casualty Company (“American National”), by and through its undersigned counsel, hereby submits this response in opposition to Defendant/Counterclaim Plaintiff Daniel J. Felix’s (“Felix”) motion seeking prejudgment and post judgment interest pursuant to 28 U.S.C.A. § 1961.

**I. SYNOPSIS OF AMERICAN NATIONAL’S RESPONSE**

As set forth more particularly herein, as well as in American National’s accompanying brief in support and Motion Pursuant to Fed. R. Civ. Pro. 50 and 59 Seeking Judgment as a Matter of Law and/or to Alter or Amend Judgment, and/or for a New Trial (hereinafter “Plaintiff’s Post-Verdict Motions”), the facts and legal arguments to which American National hereby incorporates herein, Felix’s request for prejudgment and post judgment interest in the amount of \$268,357.70 must be denied.

The same day that the instant response was filed, Plaintiff’s Post-Verdict Motions were filed. Therein, American National seeks a new trial on both liability and damages, or alternatively, for the jury verdict of \$1,560,716.41 to be molded and significantly reduced to

\$810,095.61. In light of the fact that American National is seeking a new trial after which a new judgment will likely be entered, or alternatively, to mold and significantly reduce the present judgment, there is no final judgment upon which prejudgment and post judgment interest can be calculated with precision at this time. Accordingly, the issuance of prejudgment interest or post judgment interest should be withheld until Plaintiff's Post-Verdict Motions are ruled upon.

**II. AMERICAN NATIONAL'S RESPONSE IN OPPOSITION TO AVERMENTS BY FELIX**

In response to Felix's Motion, American National hereby avers as follows:

1. In Plaintiff's Post-Verdict Motions, American National seeks an entirely new trial with respect to both liability and damages as to its claims of intentional misrepresentation, fraud and false swearing pursuant to Fed. R. Civ. P. 59.

2. If American National is successful in obtaining the right to a new trial, Felix's Motion for prejudgment and post judgment interest is undoubtedly premature because there is no final judgment upon which the prejudgment and post judgment interest Felix seeks can be calculated.

3. To the extent that American National is not successful in obtaining the right to an entirely new trial on liability and damages and the verdict is permitted to stand, American National alternatively seeks judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(b), and to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59.

4. If American National prevails with respect to the arguments it presents in Plaintiff's Post-Verdict Motions to reduce the jury verdict, the verdict would be molded to reduce the damages award to \$810,095.61 as follows:

**December 4, 2018 Jury Verdict**

Loss of dwelling:	\$727,024.33, “plus 25% endorsement” <sup>1</sup>
Loss of contents:	\$501,516
Loss of use:	\$146,620
Services from Robert L. Felix	\$3,800
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Total Judgment:	\$1,560,716.41

**Reduced/Molded Jury Verdict**

Loss of dwelling:	\$588,453.18
Loss of contents:	\$ 221,642.43
Loss of use:	\$0
Services from Robert L. Felix	\$0
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Total Molded/Reduced Judgment:	\$810,095.61 <sup>2</sup>

5. As is evident from the above-referenced damages ledger, the reduction in value of the verdict which American National seeks would eliminate several of the damages awards which were the result of the December 4, 2018 jury verdict and substantially reduces others.

6. In addition, the reduction would eliminate the “Plus 25% endorsement amount added by the Court of \$181,000.”<sup>3</sup>

7. The judgment would therefore be reduced from \$1,560,716.41 to \$810,095.61.

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<sup>1</sup> After the jury returned its verdict, the Court *sua sponte* added 25% to the Dwelling damage award; this action added \$181,756.08, bringing the total award for Loss of Dwelling to \$908,780.41, and the total verdict amount to \$1,560,716.41.

<sup>2</sup> An overview of the bases for the molded/reduction is judgment is set forth in American National’s accompanying Brief and, in detail, in Plaintiff’s Post-Verdict Motions.

<sup>3</sup> As explained in Plaintiff’s Post-Verdict Motions, American National is entitled to judgment in its favor as a matter of law under Rule 50(b) regarding the jury award stating “plus 25% endorsement,” thereby negating the Court’s adding \$181,756.08 to the Loss of Dwelling claim based upon the jury’s finding.

8. It is undisputed that in Pennsylvania that pre-judgment interest on a breach of contract claim is calculated at 6% per annum from the date of loss.

9. If the Court were to apply 6% prejudgment interest to the molded/reduced verdict sought by American National (\$810,095.61), the prejudgment interest to which Felix would be entitled would be reduced to \$139,292.06.

10. This revised prejudgment interest amount is calculated as follows:

- From 1/23/16 through 12/31/16 (343 days)

$$\text{\$810,095.61} \times .06 \times 343/365 = \text{\$45,676.08}$$

- From 1/1/17 through 12/31/17 (365 days)

$$\text{\$810,095.61} \times .06 = \text{\$48,605.74}$$

- From 1/1/18 through 12/4/18 (338 days)

$$\text{\$810,095.61} \times .06 \times 338/365 = \text{\$45,010.24}$$

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**\$139,292.06** (Total prejudgment interest as calculated above from 1/23/16 to 12/4/18, the date the jury verdict was entered on the docket).

11. Based on the fact that American National is seeking a new trial after which a new judgment will likely be entered, or alternatively, to mold and significantly reduce the present judgment, which in turn, would reduce the prejudgment interest from \$268,357.70 to \$139,292.06, it is respectfully requested that the Court deny Felix's claim for prejudgment interest as well as its claim post judgment interest at this time.

12. It is further requested that the Court refrain from awarding prejudgment, or post judgment interest of any amount, until American National's Post-Verdict Motions are disposed of in full and a final judgment is rendered.

13. Only after Plaintiff's Post-Verdict Motions are fully heard, will a final judgment have been reached and the Court be in a position to accurately calculate Plaintiff's prejudgment and post-judgment interest.

**WHEREFORE**, for the reasons set forth herein and in the attached Brief, American National respectfully requests that this Honorable Court deny Felix's Motion for prejudgment and post judgment interest and, and that it enter an Order, in the form attached hereto, declining to issue either prejudgment or post judgment interest until American National's Post-Verdict Motions are ruled upon through final disposition.

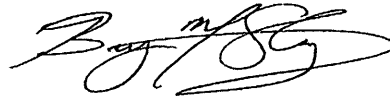
Respectfully submitted,

**POST & SCHELL, P.C.**

BY:



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Defendant AMERICAN NATIONAL  
PROPERTY AND CASUALTY COMPANY*

**Dated: 1/02/2019**

**CERTIFICATE OF SERVICE**

I, Richard L. McMonigle, Esquire, hereby certify that I caused a true and correct copy of the foregoing Plaintiff/Counterclaim Defendant's Response in Opposition to Defendant/Counterclaim's Motion for Prejudgment Interest and Post Judgment Interest Pursuant to 28 U.S.C.A § 1961 to be filed with the Court via its ECF service. Service of the foregoing Motion was made on all counsel of record via the Court's ECF system

**POST & SCHELL, P.C.**

BY:



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*Defendant AMERICAN NATIONAL*

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**Dated: 1/02/2019**